

---

**TITLE 312 NATURAL RESOURCES COMMISSION**

---

**Economic Impact Statement**

LSA Document #11-170

**IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses****Estimated Number of Small Businesses Subject to this Rule:**

The number of small businesses who are directly affected by the new rule in [312 IAC 10-4-5](#) and [312 IAC 10-5-6.5](#) is estimated to be not more than three. There are only three rivers and streams that have the designation of a natural, scenic, or recreational river, and the DNR has received only one permit request over the past few years to simply remove a logjam in any of these rivers. The number of small businesses directly affected by the changes in [312 IAC 10-5-6](#) is expected to be about 12 since a business would need only a general license (approval) from the DNR to remove a logjam or mass of wood debris in a salmonid stream (27 total in the state), instead of in all rivers and streams statewide.

**Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:**

Approximately three hours to complete and submit a construction in a floodway permit application for [312 IAC 10-4-5](#) and approximately three hours per year for two general license requests (written approval from the DNR) under [312 IAC 10-5-6](#) and [312 IAC 10-5-6.5](#). At a cost of \$25 per hour, the total estimated labor, mailing, and other paperwork costs would be \$100.

**Estimated Total Annual Economic Impact on Small Businesses to Comply:**

\$100 per year for administrative and labor costs to submit a permit application or general license request.

**Justification Statement of Requirement or Cost:**

These changes are needed to comply with the changes in the statute in [IC 14-28-1-22\(b\)\(6\)](#) that were made by the Indiana General Assembly in 2010 that created an exemption from a permit or general license from the DNR for the removal of a logjam or other mass of wood debris in rivers and streams in Indiana, with the exception of natural, scenic, and recreational rivers and salmonid streams. The DNR cannot exempt individuals or businesses from having to obtain for the removal of a logjam or mass of wood debris in a salmonid stream or natural, scenic, or recreational river or stream because of the state law in [IC 14-28-1-22\(b\)\(6\)\(A\)](#) and [IC 14-28-1-22\(b\)\(6\)\(B\)](#). The DNR has proposed an exemption from a permit requirement (requiring only a general license with written approval from the department) for the removal of a logjam or mass of wood debris in a natural, scenic, or recreational river or stream by hand or handheld tools in [312 IAC 10-5-6.5](#).

The general license authorized in [312 IAC 10-5-6](#) and [312 IAC 10-5-6.5](#) is free of charge. There are no new costs for individuals or businesses as a result of these rules. A permit is already required under the authority of [IC 14-28-1-22](#) for the removal of a logjam or mass of wood debris in a natural, scenic, or recreational river by hand or handheld tools or with the use of an excavator, small tractor, or similar equipment. There are only three rivers that have this special designation as a natural, scenic, or recreational river or stream, and they are the following rivers: (1) Blue River in Crawford, Harrison, and Washington counties; (2) Cedar Creek in Allen and DeKalb counties; and (3) Wildcat Creek in Carroll and Tippecanoe counties. There are also seven named salmonid streams, plus an additional 20 streams that are stocked by the DNR for put-and-take trout fishing under [321 IAC 2-1.5-5\(a\)\(3\)](#). The general license was required for all individuals and businesses in [312 IAC 10-5-6](#) for the removal of logjams in all rivers and streams prior to the change in the statute in [IC 14-28-1-22\(b\)\(6\)](#). Therefore, the changes in [312 IAC 10-5-6](#) and [312 IAC 10-5-6.5](#) further eliminate the need for a permit from the department, reducing costs for individuals and businesses that need to remove a logjam or mass of wood debris in a salmonid stream or natural, scenic, or recreational river or stream. These changes will help businesses alleviate flooding much quicker and with fewer costs through the elimination of a permit requirement to remove a logjam or mass of wood debris in a river or stream.

**Regulatory Flexibility Analysis of Alternative Methods:**

Explanation of Preliminary Determination: These changes are needed to comply with the changes in the statute in [IC 14-28-1-22\(b\)\(6\)](#) that were made by the Indiana General Assembly in 2010 that created an exemption from a permit or general license from the DNR for the removal of a logjam or other mass of wood debris in rivers and streams in Indiana, with the exception of natural, scenic, and recreational rivers and salmonid streams. The DNR cannot exempt individuals or businesses from having to obtain approval from the DNR for the removal of a logjam or mass of wood debris in a salmonid stream or natural, scenic, or recreational river or stream because of the state law in [IC 14-28-1-22\(b\)\(6\)\(A\)](#) and [IC 14-28-1-22\(b\)\(6\)\(B\)](#).

The conditions established in [312 IAC 10-4-5](#) for a construction in a floodway permit for the removal of a logjam or mass of wood debris in a natural, scenic, or recreational river or stream are consistent with conditions

that are typically required already for these permits. Limiting activities by equipment and the time of year ([312 IAC 10-4-5\(b\)\(1\)](#) and [312 IAC 10-4-5\(b\)\(2\)](#)) help prevent the destruction of habitat for fish, amphibians, and other aquatic species, as well as prevents the destruction of fish eggs (from April through June). The other conditions are also consistent with those required in [IC 14-28-1-22\(b\)\(6\)\(G\)](#) through [IC 14-28-1-22\(b\)\(6\)\(I\)](#) for logjam removals and helps prevent erosion, which causes sedimentation into the waterway. The DNR is required to consider the detrimental effects upon fish, wildlife, or botanical resources in [IC 14-28-1-22\(e\)](#) and the cumulative effects in [IC 14-28-1-22\(f\)](#).

The requirements in [312 IAC 10-5-6](#) and [312 IAC 10-5-6.5](#) are consistent with current requirements for a general license request to remove a logjam in a river or stream, with the addition of conditions to prevent the flow of sediment back into the waterway, which is consistent with the requirements in [312 IAC 14-28-1-22\(b\)\(6\)\(G\)](#) through [312 IAC 14-28-1-22\(b\)\(6\)\(I\)](#).

Without these provisions, the removal of logjams in salmonid streams and natural, scenic, and recreational rivers and streams will be likely to have detrimental effects upon fish, wildlife, and botanical resources in these waterways, including the taking of trout that were stocked by the DNR for anglers. The stocking of trout is an extremely popular program among anglers, and allowing the unrestricted removal of logjams would be likely to take these fish that were stocked and funded through fees generated by the sale of fishing licenses and trout and salmon stamps. The purpose of establishing natural, scenic, and recreational rivers and streams is to provide additional protection for the resources in these waterways, and allowing the unrestricted removal of logjams and masses of wood debris in these waterways would be contrary to the rules protecting them in [321 IAC 9-7-2](#) and would generate opposition from organizations dedicated to protecting these waterways.

The DNR would not be able to exempt small businesses from this proposed rule or make any changes to the proposed rule simply for small businesses. The DNR cannot exempt a businesses from having to obtain approval from the DNR for the removal of a logjam or mass of wood debris in a salmonid stream or natural, scenic, or recreational river or stream because of the state law in [IC 14-28-1-22\(b\)\(6\)\(A\)](#) and [IC 14-28-1-22\(b\)\(6\)\(B\)](#). The DNR has proposed an exemption from a permit requirement for businesses and all other entities for the removal of a logjam or mass of wood debris in a natural, scenic, or recreational river or stream by hand or handheld tools in [312 IAC 10-5-6.5](#). The DNR does not believe that an exemption from a permit requirement for the use of heavy equipment in a natural, scenic, or recreational river or stream ([312 IAC 10-4-5](#)) would be consistent with legislative intent in protecting these waterways and would be likely to contradict other rules adopted by the Natural Resources Commission to protect the special natural resources in these rivers and streams. It would also be likely to generate opposition from organizations dedicated to protecting these waterways. Changing the requirements only for small businesses would also make the rule appear to be unfair and arbitrary for other regulated entities. Furthermore, these proposed rules already make it much simpler for small businesses and other regulated entities to remove a logjam or mass of wood debris in waterways throughout the state.

The DNR does not believe that any alternatives to the proposed rule language are needed for any of these rule proposals.

**Supporting Data, Studies, or Analyses:** The DNR obtained the number of construction in a floodway permits and logjam requests from the DNR Division of Water's database of permit applications and logjam exemption requests. The number of salmonid streams was obtained from the list of streams stocked with trout in 2010 by the DNR's Division of Fish and Wildlife and from the list in [327 IAC 2-1.5-5](#). Additional analyses were done by Indiana DNR staff.

*Posted: 07/20/2011 by Legislative Services Agency*  
An [html](#) version of this document.